

**Statement of Larry S. Stewart
Past President, Association of Trial Lawyers of America
on S. 1130,
“The Motor Vehicle Rental Fairness Act”
Before the Committee on Commerce, Science
and Transportation
U.S. Senate**

September 30, 1999

Mr. Chairman and members of the Commerce Committee, my name is Larry Stewart, and I am a practicing attorney from Miami, Florida. I have practiced law for 35 years and am currently a partner with the firm of Stewart Tilghman Fox and Bianchi P.A. I also had the honor of serving as President of the Association of Trial Lawyers of America (ATLA) from 1994 to 1995. Mr. Chairman, thank you for the opportunity to present ATLA's views in opposition to S. 1130, the “Motor Vehicle Rental Fairness Act.”

The Association of Trial Lawyers of America opposes this bill for several reasons, including our long standing belief that people who have been injured should have a real opportunity to be compensated for that harm. Vicarious liability laws are one means to help ensure that is the case. This bill would abolish that principle in the several states which have applied it to car

rental agencies. We are also concerned that Congress is once again seeking to limit the rights of the states to enact liability laws as they see fit. That this effort comes in the midst of other legislative initiatives to federalize all state class actions, create a federal statute of repose, federalize no-fault auto insurance, and alter long standing state laws on punitive damages and joint and several liability makes the situation all the more alarming in a Congress sworn to return power to the states.

The principle of vicarious liability -- the legal doctrine that one entity may be held liable for the actions of another, based on their relationship to each other -- is deeply rooted in anglo-saxon jurisprudence. Where state courts and legislatures have adopted this principle, they have done so not only to ensure that injured parties are compensated for the harm they have suffered, but also to spread the risks and costs of doing business across a broader community. These vicarious liability laws also encourage renters and lessors of cars, and other merchants, to monitor their products and services more carefully, thereby ensuring safer products in the marketplace. This bill chooses to protect a thriving car rental industry rather than preserve the long standing principle of vicarious liability. As such, this legislation not only derogates state prerogatives, but does so on behalf of special interests.

The “Motor Vehicle Rental Fairness Act” is only Fair to Thriving Car Rental Agencies

Let s be clear. The “Motor Vehicle Fairness Act” is only “fair” to the thriving car rental businesses. Many of these businesses had billions of dollars in revenues in the past few years. Surely, they do not need this legislation in order to flourish. They are merely trying to limit their financial liability so they may reap additional profits. But, for the individuals who are injured by drivers of rented or leased cars, including the drivers themselves, this bill would curtail possible avenues of recovery. When rental car drivers are injured or injure others, they may seek recovery from a number of possible defendants, including the rental agency and the manufacturer of the automobile. This is not unlike the situation that exists in most other industries, where the businesses are held vicariously liable for the acts of others. There is no rationale or moral basis to single out car rental companies for special immunities. That would not only be wrong but the wrong is compounded by the fact that there is no demonstrable need for such protection from Congress. The current system is working and there is no documented evidence to support a federal override of current state laws governing this area of tort law. Indeed, this proposed bill recognizes that

states have the authority to impose financial responsibility laws on car rental businesses. Vicarious liability is in essence another form of financial responsibility. States that decide it is in their best interest or good public policy to impose such responsibility should not be prevented from doing so.

Vicarious Liability Laws Were Established to Protect the Injured and to Ensure the Safest Possible Products are Available in the United States

The courts established the principle of vicarious liability primarily to ensure injured parties recover damages for the harm they have suffered. But vicarious liability laws serve the additional purposes of spreading the risks and costs of doing business throughout a broader community, and of encouraging the sellers or renters of products to monitor those products closely to ensure the safest products possible are available to American families.

This bill would gut this fundamental principle for one industry by prohibiting states from holding any car rental agency liable for the harm resulting from a driver's negligent operation

of a operation of a rented or leased motor vehicle they own. Those states which have established vicarious liability laws for car rental agencies clearly believe there are strong policy reasons to hold these agencies responsible for any harm involving their vehicles. Holding businesses accountable via vicarious liability is one way of making sure that profit-making businesses shoulder the risks they create. It also ensures that innocent victims injured by the business s activities are compensated for their injuries, and it creates an incentive for businesses to decrease the amount of risk to which the larger community is exposed. Ultimately, this legislation would weaken car rental companies responsibility to the community at large, and thereby reduce safety on the roads for all of us.

S.1130 is Yet Another Example of Congress Seeking to Dictate State Policies

This bill is also another example of the federal government seeking to dictate how the states should behave. Currently, only 12 states, either through statute or common law, allow for the determination of vicarious liability in cases involving rented or leased cars, but virtually all states impose some form of financial responsibility on car rental businesses, although the

precise terms may vary. Congress should allow those 12 states to continue with their ongoing policies and practices. Those states which have vicarious liability laws for car rental agencies recognize that car rental companies enjoy a profit-making enterprise within their borders that places potentially high-risk drivers on their roads.

These companies are putting people behind the wheel of unfamiliar cars, often in unfamiliar places. In addition, the people who rent the cars do not have pride of ownership in the vehicle; therefore, they may engage in behaviors that they would not normally do in their own car. States like California, Florida, and New York, which have large populations, large tourism industries and the largest rental car markets, have either enacted legislation or follow common law principles to make car rental companies vicariously liable. If a company wants to profit from renting cars in their states, thereby creating more potential risks and accidents, then they should help bear the cost of the risk they create.

New York embodies the rationale of why states hold car rental companies financially responsible via vicarious liability. The New York Court of Appeals noted that New York's vicarious liability legislation was designed to "ensure access by injured persons to a financially responsible insured person against whom to recover for injuries." The New York Law Revision Commission noted that the legislation was intended to regulate

the conduct of automobile owners by “discourag[ing] owners from lending their vehicles to incompetent or irresponsible drivers.”¹ California, Connecticut, Idaho, Iowa, Nevada, Maine, Michigan, Minnesota and Rhode Island have all codified vicarious liability statutes, in addition to the other jurisdictions that follow common law principles. These states have decided that vicarious liability is the best way to handle the risks created by car rental companies. Their judgment is prudent, sound, and should be respected.

For more than 200 years, civil liability under tort and contract law have been the sovereign domain of the states. Measures that would preempt our state-based liability system, like S. 1130, are contrary to values expressed by lawmakers on both sides of the aisle. Particularly since 1995, I was under the impression that a central mission of the Congressional leadership was to work assiduously to give more authority back to the states. If that is correct, then I find it baffling, to say the least, that this Committee is conducting a hearing on federal legislation which would clearly extinguish states rights. It is particularly curious behavior when one considers that another Senate Committee is poised to take action on Senator

¹ *Haggerty v. Cedeno* 653 A.2d 1166 (1995) (quoting the New York Law Revision Commission at 593 (1958))

Thompson's bill, S.1214, the "Federalism Accountability Act of 1999," that is designed to restrain federal intervention into the traditional domains of state law and authority.

The agenda behind S.1130 is unambiguous: the proponents of this legislation seek to unilaterally take power away from the states on an issue that historically has been left to the states, that is, the regulation of automobile liability. ATLA believes that extinguishing state liability laws that work to protect our families is a measure that is at best ill conceived, and at worst unconscionable.

Why Car Rental Companies Should Be Held Responsible via Vicarious Liability

The policy rationale underlying vicarious liability for car rental companies is justified and effective. Car rental companies are the experts on their own businesses. Therefore, they are in a best position to anticipate the risks of renting cars to a variety of drivers and to plan for those risks. In addition, the major car agencies appear to be able to bear the consequences for the risks they create. According to the Auto Rental News 1997 Fact Book, there were 1.6 million rental cars in service at last count. Total revenues for all rental car companies reached \$14.6 billion in 1996, which was an 18.7 percent increase from 1985. Hertz's year end revenue was \$4.2 billion dollars last year. Avis had revenues of \$2.3 billion. Budget was at \$1.2

billion. Alamo generated \$201 million in revenue last year. According to the Wall Street Journal, profits for the top eight companies was \$245 million dollars in 1996.² Do not let these companies tell you they are facing egregious accident and litigation costs. The entire industry had only \$100 million in accident costs in 1996.³ To put this in perspective, their accident cost is .7 cents of a dollar, not even a penny of their revenue. Clearly, these car rental agencies are managing the risks they face in states with vicarious liability laws.

Yet, car rental companies are motivated to find the most cost effective methods in dealing with liability issues. In fact, their efficiency in dealing with liability issues has brought us to this Hearing Room today. After all, the most cost efficient way for these companies to deal with liability issues is to eliminate them altogether. But as a matter of fairness, car rental companies should not continue to profit from the business without being held responsible for accidents being caused by their lessees. Companies like Hertz, Avis, Alamo, and Budget, and countless other large and small profitable car rental concerns continue to impose risks on “individually random but

² Lisa Miller, *Car Rental Companies are Jacking Up the Prices*, Wall Street Journal, Feb. 4, 1997 at B6.

³ Auto Rental News, Sept./Oct. 1996.

collectively predictable victims of the activity,”⁴ namely the people injured by under-insured lessees.

Vicarious liability gives car rental companies incentives to conduct their businesses with the safety of others in mind. For example, they prevent drivers under the age of 25 years from renting their vehicles. They don't rent to customers without credit cards. They ask for your driver's license. They run a DMV check on your driving record. Prohibiting vicarious liability statutes would eliminate one of the remaining incentives car rental agencies have to continue to work toward decreasing the dangers they are imposing on the public at large. Do not let these companies walk away from their responsibilities.

There are numerous examples of how vicarious liability helps compensate innocent victims of accidents that involve rental cars, but I would like to leave you with just one. Two married couples rented a vehicle from Budget Rent-A-Car for a trip to Cornell University in Ithaca, New York. The rental contract named both couples as the parties allowed to drive the car. Unfortunately, there was an accident. One of the wives was driving when her view became distorted due to rain and

⁴ Harry J. Steiner, Moral Argument and Social Vision in the Courts 71 (1987).

fog. Due to **her unfamiliarity with the vehicle**, she could not find the windshield wiper. She lost control of the car, veered across two lanes of traffic, rolled over, and hit an embankment. The wife who was a passenger, a cardiologist, suffered a severe traumatic brain injury and will never remember her medical training or be independent again.⁵

Let me pose this question as my concluding remarks. Who is better positioned to cope with the risk? The wife who has suffered traumatic brain injuries because she happened to have the unfortunate luck of traveling in a rented car that was unfamiliar to the driver? Or Budget, who has to deal with the risk of accidents every day and who profits from putting drivers on the road every day? For those states with vicarious liability laws for auto rental agencies, we believe that system is more equitable and fair than the system S. 1130 would create. The Motor Vehicle Rental Fairness Act protects companies that profit from risk-creating activities at the expense of innocent victims. Do not let innocent victims go uncompensated to protect the thriving car rental industry.

Last Congress, as time was running out on the Second Session, these same rental car companies tried an end run

⁵ *Su v. Hong Fu and Freedom River d/b/a Budget Rent-a Car*, 733 A.2d 1133 (NJ 1999).

around any real legislative scrutiny and attempted to have this same type of legislation buried in the massive Omnibus Appropriations bill. They were stopped dead in their tracks. Of course, that might not stop them from making a second try in the next three weeks.

Nevertheless, today, at least, the sunlight of public scrutiny is being directed on this special interest legislation that would gut state rights and potentially expose our communities to more reckless behavior on the roads. Mr. Chairman, I very much appreciate having the opportunity to discuss the nature of this legislation and why it should be strongly opposed. Thank you.